

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

APRIL TERM, 1901.

No 1069.

8

No. 13, SPECIAL CALENDAR.

JOSEPH B. CHAMBERLAIN, APPELLANT,

vs.

FRANK H. EDMONDS

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED MARCH 6, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

JOSEPH B. CHAMBERLAIN, Appellant, }
vs. } No. 1069.
FRANK H. EDMONDS.

a Supreme Court of the District of Columbia.

FRANK H. EDMONDS }
vs. } No. 44402. At Law.
JOSEPH B. CHAMBERLAIN.

UNITED STATES OF AMERICA, } ss :
District of Columbia,

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition for Certiorari.*

Filed December 31, 1900.

In the Supreme Court of the District of Columbia.

FRANK H. EDMONDS }
vs. } At Law. No. 44402.
JOSEPH B. CHAMBERLAIN.

To the supreme court of the District of Columbia, holding a law court:

The petition of Frank H. Edmonds respectfully represents:

1. That he is a citizen of the United States and a resident of the District of Columbia.

2. That heretofore, to wit, on the 23rd day of April, 1900, Joseph B. Chamberlain, who is also a citizen of the United States and a resident of the District of Columbia, instituted suit before Anson S. Taylor, one of the justices of the peace in and for the District of Columbia, to recover from the defendant, your petitioner, the sum of two hundred and sixty-one dollars and thirty cents (\$261.30), alleged to be due said Chamberlain from your petitioner, the proceedings in said cause before said justice being numbered 45864 on the docket of said justice.

3. That upon the day set for the trial of said cause your petitioner appeared, by his attorney, and filed with the justice of the peace a

written demand for a trial by jury, and thereupon a venire was issued and the case continued until the 8th day of May, 1900; that

2 upon the said 8th day of May, 1900, the plaintiff, said Chamberlain, and your petitioner appeared before said justice of the peace, both in person and by their attorneys, and a trial of the case was had before a jury; that upon the closing of the case the jury was placed in charge of J. H. Minnix, the constable of the court, who was sworn to permit no person to communicate with them, and they thereupon retired to their jury-room for consultation; that, notwithstanding this fact, petitioner alleges that when neither of the parties were in court, either in person or by their attorneys, and without the knowledge or consent of either petitioner or his attorney, the said justice of the peace entered the jury-room and then and there charged the jury adversely to your petitioner; that some time after this the jury returned into the court-room and announced that they were unable to agree upon a verdict, and were thereupon discharged by the justice of the peace.

4. That your petitioner was present in court by his attorney, but not personally, when said jury announced that they were unable to agree, and said Chamberlain was also personally present at this time. Your petitioner avers that no continuance of the cause was then asked by either party, nor was any announced by the court, and no date was set for a retrial of the case, and all the parties were permitted to go without day, and no regular continuance of the case was ever entered upon the justice's docket.

3 5. Petitioner avers that thereafter the said justice of the peace again attempted to take jurisdiction of this case, and arbitrarily set a day for its hearing, but your petitioner refused to attend before said justice or to take any part in the proceedings further than to file a written objection to the jurisdiction of the court to proceed with a retrial of said case No. 45854, showing as a reason therefor that the same had been discontinued; that notwithstanding petitioner's said written objection to the jurisdiction of the court and notwithstanding the written demand for a trial by jury filed in said case No. 45854, said justice of the peace, on the 22nd day of May, 1900, personally and without the intervention of a jury and without issuing any venire for a jury, rendered *ex parte* a judgment against your petitioner for two hundred and sixty-one dollars and thirty cents (\$261.30), with interest from the 23rd day of April, 1900, besides the costs of suit, including the costs of the jury trial; which said judgment your petitioner avers was and is utterly void and — no effect and from which he was in nowise bound to appeal.

6. That on the 24th day of December, 1900, said Anson S. Taylor, justice of the peace, as aforesaid, issued an execution on the *ex parte* judgment against petitioner rendered as aforesaid, and the same was placed in the hands of one W. F. Salter, a constable; and upon the said 24th day of December, 1900, said Salter, in company with divers other persons, entered petitioner's place of business and after doing great damage to petitioner levied the said execution upon three hundred and twelve dollars and nine cents (\$312.09) in

money, property of your petitioner; that said \$312.09 is now in the hands of said Salter, who is threatening to pay the same over to said Joseph E. Chamberlain unless restrained from doing so by the order of this court.

4 7. That the time for appeal from the said *ex parte* judgment of the said justice of the peace has long since elapsed, and petitioner has no right of appeal from his action issuing the writ of execution and is wholly without remedy at law in the premises, except as hereinafter prayed.

The premises considered, petitioner prays:

1. That the writ of certiorari may issue out of this honorable court, addressed to the said Anson S. Taylor, justice of the peace, as aforesaid, commanding him to certify to this honorable court all of the records and proceedings in the said case of Chamberlain *v.* Edmonds.

2. That upon the return of said writ the judgment rendered against petitioner by said Anson S. Taylor in said case be declared null and void and the same be quashed and abated.

3. That petitioner may have such other and further relief as the nature of this case may require.

F. H. EDMONDS.

VICTOR H. WALLACE, *Attorney.*

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the foregoing petition by me subscribed, and that I know the contents thereof, and that the facts therein stated of my own personal knowledge are true, and those stated on information and belief I believe to be true.

F. H. EDMONDS.

5 Subscribed and sworn to before me this 29th day of December, 1900.

E. QUINCY SMITH,
Notary Public.

[SEAL.]

Endorsed: Let the writ issue. A. C. Bradley, justice.

Demand for Jury.

Filed January 5, 1901.

In Justice's Court of the District of Columbia, before the Hon.
Anson S. Taylor, J. P.

JOSEPH B. CHAMBERLAIN }
vs.
FRANK W. EDMONDS. }

Comes now the defendant in the above-entitled cause, by his attorney, and demands that the above-entitled cause shall be tried by jury, as provided by section 1009 of the Revised Statutes of the Dis-

trict of Columbia, the amount in controversy exceeding twenty dollars.

VICTOR H. WALLACE,
Attorney for Defendant.

6

Motion to Set a Day for Trial.

Filed January 5, 1901.

Before A. S. Taylor, One of the Justices of the Peace in and for the District of Columbia.

J. B. CHAMBERLAIN, Plaintiff, }
vs.
FRANK H. EDMONDS, Defendant. }

Now comes the plaintiff, by his attorney, in the above-entitled cause and moves the court to set a day for the trial of the issue in the above-entitled cause.

W. H. SHOLES,
Attorney for Plaintiff.

Victor Wallace, Esq., attorney for the defendant:

Please take notice that on Friday next, May 18th, 1900, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, I will call the above motion to the attention of Justice Taylor for action.

W. H. SHOLES,
Attorney for Plaintiff.

Service of above notice and motion made this 15th day of May, A. D. 1900, by handing a copy thereof to Victor Wallace in person.

W. H. SHOLES.

7

Notice of Objection to Jurisdiction.

Filed January 5, 1901.

In Justice's Court of the District of Columbia, before the Hon. Anson S. Taylor, J. P.

JOSEPH B. CHAMBERLAIN }
vs.
FRANK H. EDMONDS. }

Comes now Frank H. Edmonds, the defendant in the above-entitled cause, appearing specially for the purpose of this objection and not generally, and in nowise either acknowledging or submitting to the jurisdiction of this court in the premises, and objects to the court proceeding with this cause, showing as his reason for said objection that this court has lost jurisdiction of said cause through failure to properly continue same; also alleging as a further reason that said cause was discontinued by the failure of the jury to agree at the trial of said cause.

F. H. EDMONDS.

8

Return to Writ of Certiorari.

Filed January 5, 1901.

In Justice's Court of the District of Columbia, before Anson S. Taylor, a Justice of the Peace.

JOSEPH B. CHAMBERLAIN	}	At Law. No. 45864.
vs.		
FRANK H. EDWARDS.		

1900.

- April 23. Summons issued to J. H. Minnich, constable.
 " " Returned, "Summoned as within directed."
 " 25. Continued to April 28, 1900, 2 p. m., pd.
 28. Plea of defendant filed, 10 cts. costs.
 " 28. Demand for trial by jury filed, 10 cts. costs.
 " 28. Continued until May 8, 1900, 2 p. m., pd.
 May 8. Venire issued to J. H. Minnich, constable, returned with the following summoned as jurors: John M. Johnson, Edward F. Simpson, Luther B. Snyder, P. W. Hoover, Kimon Nicolaides, Giles F. Heilprine, Newton E. Vowles, Robert J. Kirkpatrick, Jacob J. Decker, George C. Montgomery, Richard H. Willett, and Earnest A. Shuster.
 May 8. Jury sworn and trial had. Jury failed to agree and were discharged. Plaintiff pay \$17.95 costs of jury trial.
 " 8. Continued for further hearing.
 " 15. Motion to set a day for trial served, filed May 16, 1900, 10 cts. costs.
 " 18. Motion heard, and May 22, 1900, 2 p. m., set for trial, 30 cts. costs.
 " 22. Notice of objection to jurisdiction filed, 10 cts. costs.
 " 22. Judgment for plaintiff after trial for \$261.30 debt on interest from April 23, 1900, with \$20.25 costs.

9

- Dec. 1. Execution issued to J. H. Minnich, constable, with 85 cts. costs.
 " 3. Returned, "No personal property found whereon to levy."
 " 24. Alias execution issued to W. F. Salter, constable, with \$1.10 additional costs. (Execution still in hands of officer.)
 " 31. I received the annexed writ of certiorari, whereby the proceedings before me in said suit were stopped.

A. S. TAYLOR, J. P. [SEAL.]

DISTRICT OF COLUMBIA, }
 County of Washington, } ss:

I, Anson S. Taylor, one of the justices of the peace in and for said county and District, by virtue of the annexed writ, to me de

livered, do hereby certify the record and proceedings in the suit in the writ mentioned unto the supreme court of the District of Columbia, together with all things touching the same, as full and wholly as the same is now depending before me.

Given under my hand and seal this 5th day of January, A. D. 1900.

A. S. TAYLOR, J. P. [SEAL.]

Costs of plaintiff.....	\$22.20
“ “ defendant.....	.50

10

Supplemental Return of Justice.

Filed January 12, 1901.

In the Supreme Court of the District of Columbia.

JOSEPH B. CHAMBERLAIN	} At Law. No. 44402.
vs.	
FRANK H. EDMONDS.	

Supplemental return of A. S. Taylor, justice of the peace, to the writ of certiorari issued in the above cause.

A. S. Taylor, justice of the peace, by way of additional and supplemental return to the writ of certiorari in the above cause, says that on the 22nd day of May, 1900, at the time set for the retrial of the above cause before him the attorney for the defendant appeared and filed the plea to the jurisdiction set out in the former return, which plea was overruled by me, after which I proceeded with the trial of the cause. The attorney for the defendant left the court after I had disposed of the said plea, and neither he nor the defendant participated in the retrial of the cause. That no entry was made by me of overruling said motion, but such was the fact.

1, 11, 1901.

A. S. TAYLOR, J. P. [SEAL.]

11

Affidavit of V. Wallace.

Filed January 3, 1901.

In the Supreme Court of the District of Columbia.

JOSEPH R. CHAMBERLAIN	} At Law. No. 44402.
vs.	
FRANK H. EDMONDS.	

Victor H. Wallace, being first duly sworn, on oath says that he is the attorney for Frank H. Edmonds, and was his attorney in a certain suit before Anson S. Taylor, a justice of the peace in and for the District of Columbia, instituted by Joseph B. Chamberlain, on the 23rd day of April, 1900, the same being numbered 45864 on the docket of said justice.

That, on the date set for trial of said cause, affiant, as attorney for said Frank H. Edmonds, appeared before the justice and filed with him a written demand for a jury trial in said cause, and thereupon said cause was continued and a venire was issued; that upon the 8th day of May, 1900, all the parties being present before the justice, both in person and by their attorneys, a trial was had before a duly constituted jury; that upon the close of the evidence and arguments of counsel the jury retired for consultation, in charge of J. H. Minnix, a constable of the court, who was sworn to permit no person to speak with the jury until they should agree upon a verdict; that the parties and their attorneys, after waiting for some time for the return of the jury, left the court, and while they were absent, and without the knowledge of consent of affiant or the defendant Edmonds, the justice of the peace, said Anson S.

12 Taylor, entered the jury-room and conversed and advised with the jury and gave a charge adverse to the defendant; that affiant's source of knowledge on this subject is the statements of the jurors and the admissions of said justice of the peace himself.

That, notwithstanding said charge of the justice, the jury disagreed and returned into court and announced that they were unable to agree upon a verdict, and were thereupon discharged by the justice; that affiant was personally present when this verdict was announced; that said Joseph B. Chamberlain was also personally present, but his attorney, Mr. Sholes, was absent; that neither side asked for any continuance of the case, nor did the justice announce any, and no date was set for any retrial of the cause; that affiant stayed in the court-room until some time after all the members of the jury and said Joseph B. Chamberlain had left, conversing with the justice of the peace, and nothing was said to him about any continuance of the case, and he was permitted to depart without any date being set for a retrial of the cause, although he remained in the court from ten to fifteen minutes after the jury announced their disagreement.

That, two days after this, Mr. Sholes, attorney for the plaintiff, came to affiant's office; that affiant was out at the time and Mr. Sholes left a message asking that affiant call at his office; that affiant did so, and Mr. Sholes stated that he wanted to agree upon some date for a retrial of the cause; that affiant replied that he considered the case discontinued, and would have nothing further to do with it, and would not again appear in court regarding it unless a new suit was instituted; that Mr. Sholes insisted that

13 the case was not discontinued, and informed affiant that he would file a motion to have a day set for a retrial.

That affiant, in order to be sure that he was right in his contention, went to the office of the justice of the peace after leaving Mr. Sholes. It was then late in the afternoon, and the justice had left his office, but Mr. Ruppli, an attorney, who has an office with the justice, was there. He informed affiant that he had charge of the justice's docket, and that no continuance of the cause had been entered upon it, and that the justice had not informed him that any

continuance had been taken in the case. Affiant thereupon requested Mr. Ruppli to look at the papers in the case and see if any continuance was entered on them. Mr. Ruppli took a bundle of papers from the justice's desk and looked through them, and replied to affiant that there was no note of a continuance on the papers.

That Mr. Sholes, a day or so after this, served affiant with a copy of a motion to set a day for another trial of the cause, and affiant thereupon informed Mr. Sholes that he, affiant, would have nothing to do with the proceedings, as he considered the case discontinued. Before the day set in the motion, Mr. Sholes sent a messenger to affiant to ask that the day set for hearing the motion might be postponed; that affiant informed the messenger that the postponement of the motion made no difference to him, as he, affiant, would have nothing to do with the matter, considering the case already discontinued.

14 That the date for hearing the motion was postponed and affiant notified; that affiant would not and did not appear in the morning of that day at the time set for hearing the motion, but in the afternoon of the day he called at the justice's office and asked what disposition had been made of the motion. The justice informed him that he had, at Mr. Sholes' request, set May the 22nd as the day of trial; that affiant thereupon went to the justice's docket and began looking through it. The justice asked affiant what he wanted to find. Affiant replied that he wanted to find the docket entries regarding the case. The justice thereupon informed him that there were no docket entries at all, as the case had not been heard upon his docket; that affiant then asked the justice if there were any entries anywhere regarding the case. The justice replied that there were, that he had made notes of the proceedings on the papers in the case. Affiant asked the justice what these entries were. The justice took a bundle of papers from his desk, where they had been piled up with a number of others, and read what purported to be the proceedings in the case. He read the note, "Case continued for further hearing." Affiant asked when that memorandum was made. The justice replied that it was made the day the jury disagreed, but affiant's recollection is that there was at that time no date accompanying the memorandum to show when it was made. Affiant then asked the justice if that memorandum set any date for the further hearing, and to which the case was continued. The justice answered that it did not, that it was just a "general continuance," as nearly as affiant can recollect the exact language.

15 Affiant requested the justice to read to him all the entries he had made regarding the case, which was done. Affiant noted that there was no order for a second venire and thereupon left the court; that prior to the second trial affiant on behalf of the defendant filed a written objection to the jurisdiction of the justice to proceed further with the case, setting out as a ground of such objection that the case had previously been discontinued; that neither affiant or the defendant appeared at the time set for the second trial, nor did they take any part in it or in anywise consent to it.

That some time after the hour fixed for trial on the appointed day, to wit, May 22nd, 1900, affiant called at the justice's office and found him making entries regarding the case in his docket; affiant asked the justice what disposition he had made of the case. The justice replied that he had given judgment for the plaintiff for the amount claimed, with interest and costs. Affiant asked the justice if the case had been tried by a jury. The justice answered that it had not; that he had tried it himself. Affiant asked the justice when the docket entries were made. The justice replied that some had been made that day and some "some time" before, but did — specify when this "some time" was.

That affiant did not at any time take any part in the proceedings in this cause before the justice of the peace after the jury announced that they had disagreed, other than to file a written objection to the jurisdiction of the court, and he never in anywise submitted to or acknowledged the jurisdiction or right of the said Anson S. Taylor, justice of the peace, as aforesaid, to retry the cause, 16 unless a new suit was instituted, but always insisted that the cause had been discontinued.

That affiant knows that an execution had been issued on the *ex parte* judgment rendered by the justice, and that \$312.09, the property of the petitioner in this certiorari proceeding, Frank H. Edmonds, has been levied upon thereunder, and is now in hands of the constable, affiant being personally present when said levy was made.

VICTOR H. WALLACE.

Subscribed and sworn to before me this 3d day of January, A. D. 1901.

[SEAL.]

PERCY METZGER,
Notary Public, D. C.

Answer of Joseph B. Chamberlain.

Filed January 12, 1901.

In the Supreme Court of the District of Columbia.

JOSEPH B. CHAMBERLAIN	}	At Law. No. 44402.
vs.		
FRANK H. EDMONDS.		

Answer of Joseph B. Chamberlain to the petition for writ of certiorari in the above-entitled cause.

1. He admits that the petitioner, Frank H. Edmonds, is a citizen of the United States, and a resident of the District of Columbia.

2. He admits that on the 23rd day of April, 1900, he entered a suit before Anson S. Taylor, one of the justices of the peace in and for the District of Columbia, to recover from the said Edmonds the sum of \$261.30.

3 and 4. Answering the 3rd and 4th paragraphs, the said Joseph B. Chamberlain admits that upon the day set for trial of said cause the said petitioner, the defendant, appeared by his attorney and filed with the justice a written demand for a trial by a jury; further answering said paragraphs, he stated that upon filing said demand the justice requested of the defendant that he advance sufficient money to pay the costs of the trial by jury; to which demand for costs the defendant, through his attorney, refused to comply, and thereupon the justice requested the plaintiff to advance the costs; the plaintiff, through his attorney, then stated to the justice that he would be responsible for the costs if the jury found for the defendant, and if the jury found for the plaintiff let the defendant pay the costs; to which arrangement the justice and the defendant's attorney assented, and the justice thereupon issued a venire and set the trial of the case for a jury trial for the 8th day of May, 1900; that a jury was duly sworn and a trial of the cause proceeded before them; that after the close of the case, which was protracted to a late hour in the afternoon, the jury were taken to an upper room in the building kept by the justice to consider their verdict; that the plaintiff Chamberlain and his attorney, as well as the defendant's attorney, *was* there some time; that about 6 o'clock p. m., the jury then having been out for an hour or more, the plaintiff's attorney left the court to go to his home; that this plaintiff was away for a time, 18 but returned between six and seven o'clock; that it became apparent that the jury would not agree, the plaintiff told the justice that he regretted the necessity for another trial of the cause; that the defendant's attorney was present during this conversation; that finally the justice called the jury down, and in the presence of this plaintiff and the defendant's attorney discharged the jury, after their statement that it was impossible for them to agree; that thereupon this plaintiff asked said justice when he could have another trial of the cause, and, as plaintiff's attorney was absent, the justice noted a continuance for further hearing, all of this being done while the defendant's attorney was in court; that neither party paid the said jury, with the exception of one man who was paid by the plaintiff.

5. Answering the fifth paragraph, the said Chamberlain states that he was advised by his attorney, Mr. William H. Sholes, as appears by the affidavit of Mr. Sholes filed with this answer as part hereof; that on the day succeeding the trial of said cause he called upon the attorney for the defendant to fix a day for a new trial, to which request the defendant's attorney returned an equivocal answer, without, however, raising the question of the continuance or other technicality; that although the defendant's attorney lead the plaintiff's attorney to believe that he would fix a day, the plaintiff's attorney, out of abundant precaution, served notice upon the defendant's attorney to fix a day for retrial, and at the time set by said notice, after two clear days, the plaintiff's attorney called the justice's attention to the said mo-

19 tion, and the cause was set for retrial on the 22nd day of May, 1900; that plaintiff's attorney on the same day notified defendant's attorney of the date fixed, when the defendant's attorney, for the first time, stated that he considered the case at an end because the jury had failed to agree, and that he would not appear at any further hearing of the cause; that on the 22nd day of May, 1900, at the time fixed for said retrial, this plaintiff, the said Chamberlain, appeared before said justice with his attorney ready for trial; that the said defendant appeared by his attorney and filed a plea of *puis darrein* continuance to the jurisdiction of the court, which plea is set out in full in the return of said justice; that the justice overruled said plea and proceeded with the trial of said cause; that neither the said defendant nor his attorney were present during the trial of the cause, he having left after the filing of his plea; that the plaintiff proved his case and a judgment was rendered in his favor accordingly. Further answering the said fifth paragraph, the said Chamberlain denies that the justice arbitrarily set a day for rehearing, as the day was set after due notice to the defendant's attorney, and the defendant's attorney appeared before the justice on the day set for retrial.

6. This defendant admits that on the 24th day of December, 1900, an alias execution was issued by the said justice on the said judgment, but he denies that the same was an *ex parte* judgment against the said defendant, as the defendant had been personally served with process and was within the jurisdiction of the court, who had jurisdiction of the subject-matter, which was a suit on open account for goods sold and delivered by the plaintiff to the defendant and for an amount due for rent from the defendant to the plaintiff. He further admits that W. F. Salter, a constable, together with the plaintiff, made the levy, but he denies great or any damage was done to the defendant.

JOSEPH B. CHAMBERLAIN.

DISTRICT OF COLUMBIA, ss:

I, Joseph B. Chamberlain, on oath say that I have read the foregoing answer, by me subscribed, and know the contents thereof; that the matters and things therein stated as of my own personal knowledge are true, and those stated upon information and belief I believe to be true.

JOSEPH B. CHAMBERLAIN.

Subscribed and sworn to before me the 11th day of January, 1901.

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS, *Ass't Clerk*.

Affidavit.

Filed January 12, 1901.

In the Supreme Court of the District of Columbia.

JOSEPH B. CHAMBERLAIN	}	At Law. No. 44402.
vs.		
FRANK H. EDMONDS.		

Affidavit of William H. Sholes, accompanying and forming part of the answer of Joseph B. Chamberlain to the petition of the defendant for writ of certiorari in the above-entitled cause.

DISTRICT OF COLUMBIA, ss:

William H. Sholes, being first duly sworn, on oath says that he is the attorney for Joseph B. Chamberlain; that on the 23rd day of April, 1900, on behalf of his client, he instituted a suit before Anson S. Taylor, one of the justices of the peace in and for the District of Columbia, against the said Edmonds to recover the sum of \$261.30 for goods and merchandise sold and delivered by the said Chamberlain to the said Edmonds, and also for a balance due on a rent account between them; that on the day set for trial the defendant and his attorney appeared before said justice, and after filing written pleas in the case demanded a jury trial; that thereupon the justice requested the defendant to advance the necessary costs for the jury; to which demand the defendant refused to comply; that the justice then called upon the plaintiff to advance the costs; that this affiant, as attorney for plaintiff, then requested the court to issue a venire and let the costs of the jury abide the result of the trial; to which arrangement the defendant consented, and the jury was accordingly summoned and a trial

22 had on the 8th day of May, 1900; that the trial commenced in the afternoon and was protracted until five o'clock, when the jury retired to consider their verdict; that this affiant waited about the court-room for nearly an hour, and, as the jury had not agreed upon their verdict, this affiant left the justice's office for his home, which was a long distance from the office of the said justice; that on the next morning this affiant learned from the justice that the jury had failed to agree, and that the justice had continued the case to fix a day for retrial; that this affiant thereupon, on that day or the day following, called upon defendant's attorney for the purpose of arranging with him a day for retrial; that this affiant believes that defendant's attorney was not in his office, but that later on the same day he called at the office of this affiant, when this affiant asked him if he would be ready to try the case in two or three days; that defendant's attorney told this affiant that he would see about it, or words to that effect, and left affiant's office; that a few days later, not having heard from defendant's attorney, this

affiant again called at his office and served a written notice upon the said attorney requesting that he appear before the justice for the purpose of having a day set for retrial of the cause; that the defendant's attorney then for the first time advised this affiant that he would have nothing further to do with the case on the ground that, as the jury had failed to agree, that was the end of the action, and also upon the technical question as to the entering of the continuance; that upon the hearing of said motion the justice fixed the 22d day of May,

23 1900, at 2 p. m., for trial; that this affiant at once notified defendant's attorney of the day and hour for trial and requested his attendance; that on the day set for trial the defendant appeared and filed a plea *puis durrein* continuance, which plea was overruled by the justice, who proceeded with the trial of the cause, the defendant taking no part therein, having left the court after the disposition of his said plea; that upon the evidence and proof a judgment was rendered in favor of the plaintiff for the sum claimed; that this affiant on the same day advised defendant's attorney that judgment had been rendered for the plaintiff for the amount claimed; to which defendant's attorney replied substantially, All right; go ahead if you think your judgment is good; that the defendant noted no appeal, nor took any steps to appeal, from said judgment.

W. H. SHOLES.

Subscribed and sworn to before me this 11th day of January, A. D. 1901.

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS, *Ass't Clerk*.

24

Motion to Quash Writ.

Filed January 12, 1901.

In the Supreme Court of the District of Columbia.

JOSEPH B. CHAMBERLAIN	}	At Law. No. 44402.
vs.		
FRANK H. EDMONDS.		

Now comes Joseph B. Chamberlain, plaintiff in the above-entitled cause, by his attorney, and moves the court to quash the writ of certiorari issued in the above-entitled cause against Anson S. Taylor, justice of the peace, upon the return of the said justice and the answer of the plaintiff with the accompanying affidavit filed herein.

D. W. BAKER,
W. H. SHOLES,
Attorneys for Plaintiff.

Victor H. Wallace, Esq., attorney for the defendant:

Please take notice that the above motion will be called for hearing on Saturday, the 12th day of January, 1901, at 10 o'clock a. m., be-

fore the justice holding circuit court No. 2, or as soon thereafter as counsel can be heard.

D. W. BAKER,
W. H. SHOLES,
Attorneys for Plaintiff.

Copy of above motion served on the defendant's attorney this 12th day of January, 1901.

W. H. SHOLES.

25 Supreme Court of the District of Columbia.

FRIDAY, *January 25th*, 1901.

Session resumed pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * *

FRANK H. EDMONDS, Plaintiff,	} No. 44402.
v.	
JOSEPH B. CHAMBERLAIN, Defendant.	

Upon hearing the motion of the respondent, Mr. Joseph B. Chamberlain, to quash the writ of certiorari issued herein, it is considered that said motion be, and the same is hereby, overruled; and thereupon the motion of Frank H. Edmonds, petitioner herein, to vacate the judgment of the justice of the peace, and the writ of execution issued thereon coming on to be heard, after argument of counsel for the respective parties, it is considered that the said judgment be, and the same is hereby, vacated and for nothing held, and the writ of execution issued thereon quashed at the cost of the respondent, Joseph B. Chamberlain, and that said Edmonds have execution thereof; and, further, the said case is hereby remanded to the justice of the peace from whom it came, to be proceeded with according to law.

From the foregoing order the respondent, Joseph B. Chamberlain, by his counsel, in open court, notes an appeal to the Court of Appeals of the District of Columbia, and thereupon the court fixes the bond to operate as a supersedeas in the sum of five hundred dollars.

Memorandum.

January 29, 1901.—Appeal bond filed.

26

Stipulation for Record.

. Filed February 6, 1901.

In the Supreme Court of the District of Columbia.

CHAMBERLAIN	}	No. 44402. Law.
vs.		
EDMONDS.		

Record for Appeal.

- No. 1. Petition for certiorari.
 Return of justice (parts indicated).
 “ 2. Demand for jury.
 “ 3. Motion to fix day for trial.
 “ 4. Plea to jurisdiction.
 “ 5. Docket entries of J. P.
 “ 6. Supplemental return of J. P.
 “ 7. Affidavit of Victor H. Wallace.
 “ 8. Answer of Chamberlain and affidavit of Sholes.
 “ 9. Motion to quash writ.
 “ 10. Order of court overruling motion to quash writ and vacating judgment.
 “ 11. Appeal and bond.

D. W. BAKER,
 W. H. SHOLES,
 Attorneys for Chamberlain.
 VICTOR H. WALLACE,
 Attorney for Edmonds.

27 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
 District of Columbia, } ss :

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 26, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 44402, at law, wherein Frank H. Edmonds is petitioner and Joseph B. Chamberlain is respondent, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 14 day of February, A. D. 1901.

Seal Supreme Court
 of the District of
 Columbia.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1069. Joseph B. Chamberlain, appellant, vs. Frank H. Edmonds. Court of Appeals, District of Columbia. Filed Mar. 6, 1901. Robert Willett, clerk.